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**From:**

**Sent:** Friday, April 15, 2011 9:01:18 AM

**To:**

**Cc:**

**Subject:** ITG question re SECA tax on tribal council member compensation

You asked whether amounts paid to an elected Indian tribal council member, for services rendered as such, are subject to self-employment tax. The answer is no.

Revenue Ruling 59-354 concludes that services performed by members of tribal councils in their capacities as council members do not constitute "employment" for Federal employment tax purposes and, although includible in gross income under section 61 of the Code, amounts paid to members of tribal councils for services performed by them as council members do not constitute "wages" where their duties appear to be similar to the duties of a city council. The revenue ruling does not conclude that Indian tribal council members are not employees; rather, the assumption is that they were common law employees.

It has been the Service's position that a taxpayer in his capacity as an elected tribal council member is a common law employee for Federal employment tax purposes. Based on Rev. Rul. 59-354, remuneration paid to the tribal council member is not subject to the FICA taxes or income tax withholding. Further, amounts paid to a tribal council member for services rendered as an elected tribal council member are not subject to the taxes imposed under the Self-Employment Contributions Act.

See Publication 4268 (Rev. 11-08), Indian Tribal Government Employment Tax Desk Guide, page 18; CCA 199906001 (tribal council members were employees, payments were not wages); TAM 9410006 (tribal council member was employee, payments were not subject to SECA tax).